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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 CHERYL MURPHY, individually and on
12 behalf of all others similarly situated,

13 Plaintiffs,

14 v.

15 VERMONT TEDDY BEAR COMPANY,
16 a Vermont Corporation; and DOES 1–10,
inclusive,

Defendants.

Case No. 13-cv-09387-ODW(CWx)

**ORDER REMANDING CASE TO
VENTURA COUNTY SUPERIOR
COURT**

17 On December 20, 2013, Defendant Vermont Teddy Bear Company (VTBC)
18 removed this case to this Court, ostensibly invoking diversity jurisdiction under
19 28 U.S.C. § 1332, 1441, and 1453. But after considering VTBC's Notice of Removal,
20 the Court finds that it lacks subject-matter jurisdiction over this action. The Court
21 therefore **REMANDS** this case to Ventura County Superior Court, case number case
22 number 50-2013-00444706.

23 Federal courts are courts of limited jurisdiction, having subject-matter
24 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
25 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
26 375, 377 (1994). A defendant may only remove a suit filed in state court if the federal
27 court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). But
28 courts strictly construe the removal statute against removal jurisdiction, and federal

1 “jurisdiction must be rejected if there is any doubt as to the right of removal in the
2 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party
3 seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
4 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at
5 566).

6 Federal courts have original jurisdiction where an action presents a federal
7 question under 28 U.S.C. § 1331 or diversity of citizenship under 28 U.S.C. § 1332.
8 To exercise diversity jurisdiction, a federal court must find complete diversity of
9 citizenship among the adverse parties, and the amount in controversy must exceed
10 \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a). Alternatively,
11 diversity jurisdiction can be established under the Class Action Fairness Act
12 (“CAFA”). Under CAFA, diversity jurisdiction exists in “mass action” suits so long
13 as the following requirements are met: (1) 100 or more plaintiffs; (2) common
14 questions of law or fact between plaintiffs’ claims; (3) minimal diversity, where at
15 least one plaintiff is diverse from one defendant; (4) aggregated claims in excess of \$5
16 million; and (5) at least one plaintiff’s claim exceeding \$75,000. 28 U.S.C. § 1332(d);
17 *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006).

18 For complete-diversity purposes, a natural person’s citizenship is “determined
19 by her state of domicile, not her state of residence.” *Kantor v. Warner-Lambert Co.*,
20 265 F.3d 853, 857 (9th Cir. 2001); *see also Jeffcott v. Donovan*, 135 F.2d 213, 214
21 (9th Cir. 1943) (“Diversity of citizenship as a basis for the jurisdiction of a cause in
22 the District Court of the United States is not dependent upon the residence of any of
23 the parties, but upon their citizenship.”).

24 In its Notice of Removal, VTBC alleges that “Plaintiff alleges she is a resident
25 of California.” (Not. of Removal ¶ 9 (citing ¶¶1 of the Complaint.) This is
26 insufficient. While a party’s residence may be prima facie evidence of that party’s
27 domicile when an action is brought in federal court in the first instance, *see State*
28 *Farm Mut. Auto. Ins. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994), mere residence

1 allegations are insufficient to establish citizenship on removal in light of the strong
 2 presumption against removal jurisdiction. *See Kanter*, 265 F.3d at 857; *Gaus*, 980
 3 F.2d at 567.

4 Neither does VTBC cite any objective facts to establish that Murphy is a
 5 California citizen, such as “voting registration and voting practices, . . . location of
 6 brokerage and bank accounts, location of spouse and family, membership in unions
 7 and other organizations, place of employment or business, driver’s license and
 8 automobile registration, and payment of taxes.” *Lew v. Moss*, 797 F.2d 747, 750 (9th
 9 Cir. 1986). The Court therefore finds that VTBC has not competently established that
 10 this Court has diversity jurisdiction over this case.

11 Further, in its removal papers, VTBC alleges that Murphy has placed, in the
 12 aggregate, more than \$5 million in controversy, but it fails to allege that the amount in
 13 controversy for any individual Plaintiff—or even one individual plaintiff—exceeds
 14 \$75,000. (Notice of Removal ¶ 17.) This does not suffice. Under Ninth Circuit law,
 15 individual plaintiffs must still meet the \$75,000 amount-in-controversy requirement in
 16 a CAFA mass action: “*jurisdiction shall exist only over those plaintiffs whose claims*
 17 *in a mass action satisfy the [in excess of \$75,000] jurisdictional amount.*” *Abrego*,
 18 443 F.3d at 687 (emphasis and alteration in original) (citing 28 U.S.C.
 19 § 1332(d)(11)(B)(i)). While it is unclear whether each individual plaintiff in a mass
 20 action has to meet the \$75,000 amount-in-controversy requirement, it is clear that at
 21 least one plaintiff must meet that requirement. *Id.* at 689 (“We do conclude . . . that
 22 the case cannot go forward unless there is *at least* one plaintiff whose claims can
 23 remain in federal court.”).


24 Examining the Complaint and VTBC’s removal papers, the Court finds no
 25 evidence suggesting that any class member would be entitled to more than \$75,000 in
 26 damages. Murphy brings this class-action suit for the alleged recording of her
 27 wireless telephone conversation with one of VTBC’s customer-service representatives
 28 in violation of California Penal Code section 632.7. (Compl. ¶¶ 18–22.) Murphy

1 alleges entitlement to statutory penalties each alleged violation, for herself and each
2 class member. (Compl. ¶ 21.) California Penal Code section 637.2 provides for
3 statutory damages of \$5,000 for each alleged violation of California Penal Code
4 section 632.7. Thus, although the statutory penalty sought for each alleged violation,
5 when multiplied by the number of potential violations, exceeds \$5,000,000.00, no
6 individual plaintiff could recover more than \$75,000.

7 Based on VTBC and Murphy's allegations thus far, the Court finds that no
8 individual putative class member's claim exceeds \$75,000 by a preponderance of the
9 evidence. Because the Court therefore cannot determine that any one Plaintiff would
10 have a claim that could remain in federal court, *see Abrego*, 443 F.3d at 689, the Court
11 *sua sponte* **REMANDS** this case to Superior Court of California, Ventura County,
12 800 S. Victoria Avenue, Ventura, California 93009, case number 50-2013-00444706-
13 CU-MT-VTA. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that
14 it lacks subject-matter jurisdiction, the court must dismiss the action."). The Clerk of
15 Court shall close this case.

16 **IT IS SO ORDERED.**

17
18 January 13, 2014

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21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**
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